

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 1999-512-C - ORDER NO. 2000-0289

MARCH 24, 2000

IN RE: Application of Budget Phone, Incorporated For) ORDER
A Certificate of Public Convenience and) GRANTING
Necessity To Provide Resold Local Exchange) CERTIFICATE TO
Telecommunications Services in the State of) PROVIDE LOCAL
South Carolina) SERVICES

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of Budget Phone, Inc. ("Budget Phone" or the "Company") requesting a Certificate of Public Convenience and Necessity to authorize Budget Phone to provide local exchange telecommunications services throughout the State of South Carolina. The Company's Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 1999) and the Regulations of the Public Service Commission of South Carolina.

By letter, the Commission's Executive Director instructed Budget Phone to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The proposed Notice of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings. Budget Phone complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. A Petition to Intervene was received from the South Carolina Telephone Coalition ("SCTC").

On February 24, 2000, counsel for SCTC filed with the Commission a Stipulation in which Budget Phone stipulated that it would seek authority in non-rural local exchange ("LEC") service

areas of South Carolina and that it would not provide any local service to any customer located in a rural incumbent's service area, unless and until Budget Phone provided written notice of its intent prior to the date of the intended service. Budget Phone also stipulated that it was not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas. Budget Phone agreed to abide by all State and Federal laws and to participate to the extent that it may be required to do so by the Commission in support of universally available telephone service at affordable rates. The SCTC withdrew its opposition to the granting of a statewide Certificate of Public Convenience and Necessity to Budget Phone to provide local services provided the conditions contained in the Stipulation are met. The Stipulation was entered into the evidence of the hearing, and the Staff requested that the Stipulation be approved by the Commission. The Stipulation is approved and attached as Order Exhibit 1.

A hearing was commenced on March 1, 2000, at 2:30 p.m., in the Commission's Hearing Room. The Honorable Philip T. Bradley, Chairman, presided. Budget Phone was not represented by counsel. Jocelyn D. Green, Staff Counsel, represented the Commission Staff.

Art Magee, Vice President of Budget Phone, appeared and testified in support of the Application. Mr. Magee adopted the prefiled testimony of Robert D. Hyde, Chief Executive Officer of Budget Phone. The Company is a Louisiana corporation, which has been granted a Certificate of Authorization to transact business in the State of South Carolina by the South Carolina Secretary of State. Upon receiving certification from this Commission, Budget Phone proposes to operate in South Carolina as a reseller of residential local exchange service. According to the testimony, the Company has negotiated a resale agreement with BellSouth; Budget Phone may negotiate resale agreements with GTE South, Incorporated in the future.

Mr. Magee offered that Budget Phone possesses the necessary financial qualifications to provide the services for which it seeks authority. Budget Phone provided updated financial information at the hearing to demonstrate its financial resources. The updated financial statements indicate that as of December 31, 1999, Budget Phone had total current assets of \$1,792,514 and total current liabilities of \$1,069,807. The Company also had ending retained earnings of \$1,017,345 as of December 31, 1999.

Regarding the Company's technical ability and managerial abilities to offer services in South Carolina, Mr. Magee offered that Budget Phone has sufficient technical and managerial resources and abilities to provide the services for which authority is sought. The record reveals that Budget Phone's management team is composed of individuals who collectively have over forty-eight years of telecommunications experience. Chief Executive Officer Robert Hyde entered the paging business in 1988. Mr. Hyde's paging business started with zero subscribers and in ten years the company had a subscriber base of 40,000. In addition, the company grew to a total of nine retail outlets where prepaid paging, prepaid cellular, prepaid home phone, and prepaid long distance were marketed. Another member of the Company's management team, Gary Honeycutt, Technical Director of Budget Phone, has operated his own consulting firm during his 35 years of computer experience. In addition, the testimony reveals Mr. Honeycutt has extensive knowledge of many applications, including wide area networking, Novell, Microsoft NT and SQL databases. As further evidence of the Company's abilities to provide the services for which authority is requested, Mr. Magee offered that Budget Phone is currently licensed and operating in Louisiana, Mississippi, North Carolina, Florida, and Tennessee.

Mr. Magee explained that Budget Phone maintains its customer service department at the Company's headquarters in Shreveport, LA. Fifty-one employees, including supervisors are

committed to the customer service department. The customer service department is usually open from 8:00 a.m. until 5:00 p.m., CDT, five days a week. The customer service department answers questions concerning services and customers' bills. Customers can also contact dealer-agents where they obtained their services; when customers seek information from the dealer-agents concerning their bills and other services, the dealer-agents will have access to all customers to whom the dealer-agents sold their services. The Company and its dealer-agents selling Budget Phone's services execute a written agreement to ensure that the Company's dealer-agents comply with all applicable rules and regulations of the Commission.

According to Mr. Magee, approval of the authority for Budget Phone will provide consumers in South Carolina with a choice of carriers to a segment of the market which typically has few choices available. Mr. Magee also testified that Budget Phone's customers prefer the convenience of the Company's dealer-agent network located within their neighborhoods where they can make payments and access customer service. Budget Phone's customers consist of those individuals who cannot obtain telephone service from other ILECs for one reason or another, such as non-payment or credit problems.

According to the application and Mr. Magee, Budget Phone requests waivers of certain Commission regulations. First, Budget Phone seeks a waiver of Reg. 103-610 which requires a company to keep its books and records within South Carolina. Mr. Magee stated that Budget Phone desires to keep its books and records at its headquarters in Shreveport, LA. Next, Budget Phone requests that it be allowed to maintain its books and records in accordance with Generally Accepted Accounting Principles ("GAAP"), rather than the Uniform System of Accounts ("USOA"). According to Mr. Magee, Budget Phone currently maintains its books in accordance with GAAP. Third, Budget Phone requests a waiver of Reg. 103-631 so that it will not be required to publish its

own local directory. Budget Phone will contract with BellSouth to include the listings of Budget Phone's customers in BellSouth's directory. Finally, Budget Phone requests a waiver of any reporting requirement which is not applicable to a reseller of local exchange telecommunications service.

Upon consideration of the application and the record from the hearing, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Budget Phone is organized as a corporation under the laws of Louisiana and has received a certificate from the South Carolina Secretary of State to transact business within South Carolina as a foreign corporation.
2. Budget Phone wishes to provide local exchange services within the State of South Carolina.
3. The Commission finds that Budget Phone possesses the technical, financial, and managerial resources sufficient to provide the service requested. S.C. Code Ann. §58-9-280(B)(1) (Supp. 1999).
4. The Commission finds that Budget Phone's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. §58-9-280(B)(3) (Supp. 1999).
5. The Commission finds that Budget Phone will participate in the support of universally available telephone service at affordable rates. S.C. Code Ann. §58-9-280(B)(4) (Supp. 1999).
6. The Commission finds that Budget Phone will provide services which will meet the service standards of the Commission. S.C. Code Ann. §58-9-280(B)(2) (Supp. 1999).

7. The Commission finds that the provision of local exchange service by Budget Phone “does not otherwise adversely impact the public interest.” S.C. Code Ann. §58-9-280(B)(5) (Supp. 1999).

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to Budget Phone to provide competitive intrastate local exchange services within the State of South Carolina. The terms of the Stipulation between Budget Phone and the SCTC (attached hereto as Exhibit 1) are approved and adopted as a portion of this Order. Any proposal to provide local services to rural service areas is subject to the terms of the Stipulation. In accordance with the Stipulation, Budget Phone may not provide any local service to a customer located in a rural incumbent LEC’s service area, unless or until Budget Phone provides such rural incumbent LEC and the Commission, written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. The Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while it conducts any proceeding incident to the Petition or upon the Commission’s own Motion, provided that the Commission can further suspend the implementation date upon a showing of good cause. It is specifically provided that all rights under Federal and State law are reserved to the rural incumbent LECs, and this Order in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications as they may be entitled. If, after notice from Budget Phone that it intends to serve a customer located in a rural incumbent LEC’s service area, and the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law, or if the Commission institutes a proceeding of

its own, no service may be provided by Budget Phone in a rural incumbent LEC's service area pursuant to this Order without prior and further Commission approval.

2. Budget Phone shall file, prior to offering local exchange services in South Carolina, its final tariff of its local service offerings conforming to all matters discussed with Staff and comporting with South Carolina law in all matters. Any proposed change in the rates reflected in the tariff for local services which would be applicable to the general body of the Company's subscribers shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 1999).

3. Budget Phone shall resell or provide the services of only those companies authorized to provide telecommunications services in South Carolina by this Commission.

4. Budget Phone shall conduct its business in compliance with Commission decisions and Orders, both past and future, including but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

5. Budget Phone shall file annual financial information in the form of annual reports and gross receipt reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, Budget Phone shall keep such financial records on an intrastate basis as needed to comply with the annual report and gross receipt filings.

6. Title 23, Chapter 47, South Carolina Code of Laws Ann., governs the establishment and implementation of a "Public Safety Communications Center," which is more commonly known as a "911 system" or "911 service." Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs Budget Phone to contact the appropriate authorities regarding 911 service in the counties and cities where the

Company will be operating. Contact with the appropriate 911 service authorities is to be made before beginning telephone service in South Carolina. Accompanying this Order is an information packet from the South Carolina Chapter of the National Emergency Number Association (“SC NENA”) with contact information and sample forms. The Company may also obtain information by contacting the E911 Coordinator at the Office of Information Resources of the South Carolina Budget and Control Board. By this Order and prior to providing services within South Carolina, Budget Phone shall contact the 911 Coordinator in each county, as well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the Company’s operations as required by the 911 system.

7. The Company shall, in compliance with Commission regulations, designate and maintain authorized utility representatives who are prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the names of the authorized representatives to be contacted in connection with general management duties as well as emergencies which occur during non-office hours.

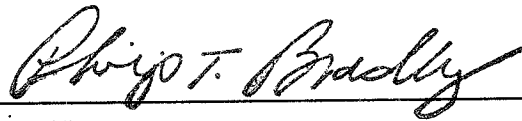
Budget Phone shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. (Attachment A shall be utilized for the provision of this information to the Commission.) Further, the Company shall promptly notify the Commission in writing if the representatives are replaced.

8. Budget Phone shall conduct its business in compliance with Commission decisions and Orders, both past and future, including but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

9. Budget Phone requested waivers from certain Commission regulations and requirements. Specifically, Budget Phone requested waivers from (1) the requirement found in Rule 103-631 to publish and distribute local exchange directories, (2) the requirement contained in Rule 103-610 that all records be kept within the State of South Carolina, and (3) any requirement to maintain books and records in compliance with the USOA. The Commission grants the request for waiver from the requirement to publish directories as Budget Phone has indicated that it will contract with BellSouth to include the customers of Budget Phone in the directory listing of BellSouth's directory. Further, the Commission grants the request for a waiver from the requirement contained in Rule 103-610 that all records be kept within the State of South Carolina as Budget Phone has indicated that its principal place of business is located in Shreveport, LA. Furthermore, Budget Phone has indicated that it will make its records available for inspection upon request by the Commission. Further, the Commission grants Budget Phone's request that it be allowed to keep its books and records in accordance with GAAP rather than the USOA; Budget Phone shall maintain a separate book of accounts on its South Carolina operations. The Commission at this time, however, denies Budget Phone's request that it be exempt from any reporting requirements which are not applicable to a reseller of local exchange telecommunications service. This request is too nebulous and speculative to grant. In the future, Budget Phone may request that this Commission grant a waiver of a specific regulation pursuant to 26 S.C. Code Ann. Regs. 103-803 (1976). Budget Phone is directed to comply with all Commission regulations, unless a regulation is specifically waived by the Commission.

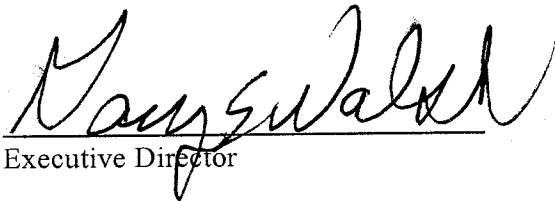
10. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Chairman

ATTEST:



Executive Director

(SEAL)

MARCH 24, 2000

ATTACHMENT A

AUTHORIZED UTILITY REPRESENTATIVE INFORMATION

PURSUANT TO SOUTH CAROLINA PUBLIC SERVICE COMMISSION REGULATION

103-612.2.4(b) - Each utility shall file and maintain with the Commission the name, title, address, and telephone number of the persons who should be contacted in connection with General Management Duties, Customer Relations (Complaints), Engineering Operations, Test and Repairs, and Emergencies during non-office hours.

Company Name (Including dba Name(s) or Acronyms used or to be used in South Carolina)

Business Address

City, State, Zip Code

A.

General Manager Representative (Please Print or Type)

Telephone Number / Facsimile Number / E-mail Address

B.

Customer Relations (Complaints) Representative (Please Print or Type)

Telephone Number / Facsimile Number / E-mail Address

C.

Engineering Operations Representative (Please Print or Type)

Telephone Number / Facsimile Number / E-mail Address

D.

Test and Repair Representative (Please Print or Type)

Telephone Number / Facsimile Number / E-mail Address

E.

Contact for Emergencies During Non-Office Hours (Please Print or Type)

Telephone Number / Facsimile Number / E-mail Address

F.

Financial Representative (Please Print or Type)

Telephone Number / Facsimile Number / E-mail Address

G.

Customer Contact Telephone Number for Company (Toll Free)

This form was completed by

Signature

**If you have any questions, contact the Consumer Services Department (803-896-5230)
or Utilities Department at (803-896-5105).**

BEFORE
THE PUBLIC SERVICE COMMISSION
OF
SOUTH CAROLINA

Docket No. 1999-512-C

Re: Application of Budget Phone, Inc. for a)
Certificate of Public Convenience and)
Necessity to Provide Resold Local Exchange)
Telecommunications Services in the State)
of South Carolina)
_____)

STIPULATION

The South Carolina Telephone Coalition ("SCTC") (see attachment "A" for list of companies) and Budget Phone, Inc. ("Budget Phone") hereby enter into the following stipulations. As a consequence of these stipulations and conditions, SCTC does not oppose Budget Phone's Application. SCTC and Budget Phone stipulate and agree as follows:

1. SCTC does not oppose the granting of a statewide Certificate of Public Convenience and Necessity to Budget Phone, provided the South Carolina Public Service Commission ("Commission") makes the necessary findings to justify granting of such a certificate, and provided the conditions contained within this stipulation are met.
2. Budget Phone stipulates and agrees that any Certificate which may be granted will authorize Budget Phone to provide service only to customers located in non-rural local exchange company ("LEC") service areas of South Carolina, except as provided herein.
3. Budget Phone stipulates that it is not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas.
4. Budget Phone stipulates and agrees that it will not provide any local service, by its own facilities or otherwise, to any customer located in a rural incumbent LEC's service area, unless

and until Budget Phone provides such rural incumbent LEC and the Commission with written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. Also, Budget Phone acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause.

5. Budget Phone stipulates and agrees that if Budget Phone gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law, or the Commission institutes a proceeding of its own, then Budget Phone will not provide service to any customer located within the service area in question without prior and further Commission approval.

6. Budget Phone acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures, and guidelines do not conflict with Federal or State law.

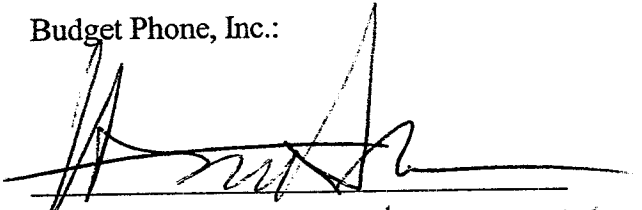
7. The parties stipulate and agree that all rights under Federal and State law are reserved to the rural incumbent LECs, and this Stipulation in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled.

8. Budget Phone agrees to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available telephone service at affordable rates.

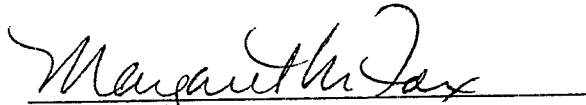
9. Budget Phone hereby amends its application and its prefiled testimony in this docket to the extent necessary to conform with this Stipulation.

AGREED AND STIPULATED to this 8 day of FEB, 2000.

Budget Phone, Inc.:


R. DANIEL HYDE, JR.
PRESIDENT
BUDGET PHONE, INC.

South Carolina Telephone Coalition:


M. John Bowen, Jr.
Margaret M. Fox
McNAIR LAW FIRM, P.A.
Post Office Box 11390
(803) 799-9800

Attorneys for the South Carolina Telephone Coalition

ATTACHMENT A

South Carolina Telephone Coalition Member Companies for Purposes of Local Service Stipulation

ALLTEL South Carolina, Inc.

Bluffton Telephone Company, Inc.

Chesnee Telephone Company

Chester Telephone Company

Farmers Telephone Cooperative, Inc.

Ft. Mill Telephone Company

Hargray Telephone Company, Inc.

Heath Springs Telephone Company Inc.

Home Telephone Company, Inc.

Lancaster Telephone Company

Lockhart Telephone Company

McClellanville Telephone Company

Norway Telephone Company

Palmetto Rural Telephone Cooperative, Inc.

Piedmont Rural Telephone Cooperative, Inc.

Pond Branch Telephone Company

Ridgeway Telephone Company

Rock Hill Telephone Company

Sandhill Telephone Cooperative, Inc.

St. Stephen Telephone Company

West Carolina Rural Telephone Cooperative, Inc.

Williston Telephone Company